

**Sonnenschein**  
SONNENSCHN NATH & ROSENTHAL LLP

**Facsimile Transmittal Sheet**

DATE• August 14, 2006

**RECEIVED  
CENTRAL FAX CENTER****AUG 14 2006**

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME• Franco M. SALVOZA

FAX• (571) 273-8300

CLIENT/MATTER• 60005161-0114

FROM• Saul L. Zackson

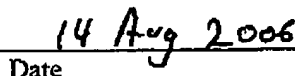
TIME SENT

TOTAL NUMBER OF PAGES TRANSMITTED, INCLUDING THIS SHEET: Three (3)

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.



Saul L. Zackson

  
Date

Type of Paper transmitted: RESPONSE TO RESTRICTION REQUIREMENT

Applicant's Name: Andrew S. Pekosz

Serial No. (Control No.): 10/700,239

Examiner: Franco M. SALVOZA

Filing Date

November 3, 2003

Art Unit: 1648

Application Title:

METHODS AND COMPOSITIONS FOR DETECTION OF  
SEGMENTED NEGATIVE STRAND RNA VIRUSES

Original will NOT be mailed

**CONFIDENTIALITY NOTE**

The documents accompanying this facsimile transmission and the Facsimile Transmission Sheet contain information from the law firm of Sonnenschein Nath & Rosenthal which is confidential or privileged. The information is intended to be for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this facsimiled information is prohibited. If you have received this facsimile in error, please notify us by telephone immediately so that we can arrange for the retrieval of the original documents at no cost to you.

IF YOU DO NOT RECEIVE ALL OF THE PAGES ABOVE, PLEASE CALL 314.241.1800 AS SOON AS POSSIBLE.

SN&amp;R FACSIMILE DEPARTMENT USE ONLY:

TRANSMISSION COMPLETED AT:

DOCUMENT TRANSMITTED BY:



Aug-14-06

11:08am

From-Sonnenschein Nath &amp; Rosenthal

314 259 5959

T-905

P.002/003

F-701

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/700,239

Applicant: Andrew S. Pekosz

Filed: November 3, 2003

Docket No.: 60005161-0114

Examiner: Salvoza, M Franco G

Group Art Unit: 1648

Confirmation No.: 3764

RECEIVED  
CENTRAL FAX CENTER

August 14, 2006

AUG 14 2006

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
By Facsimile  
Fax number (571) 273-8300

## RESPONSE TO RESTRICTION REQUIREMENT

Sir:

The present paper responds to the Restriction Requirement mailed August 1, 2006. The present application was previously subjected to a Restriction Requirement in a paper mailed January 26, 2005. New claims were submitted in the Response to this Restriction Requirement. As a result, claims 1-25 and 95-98 are presently under consideration.

In response to the Restriction Requirement mailed August 1, 2006, Applicant elects, with traverse, the methods of claims 1 and 10 wherein the cell lacks at least one nucleocapsid protein selected from the group consisting of PA PB1, PB2, and NP. Applicant further elects with traverse protein PA as a species election, as required by the PTO.

Applicant requests reconsideration and withdrawal of the Restriction Requirement, because the PTO has not established proper grounds for restriction.

To support a requirement for restriction between combination and subcombination inventions, two-way distinctiveness and reasons for insisting on a restriction are necessary, i.e., there would be a serious burden as evidenced by separate classification, status, or field of search. MPEP §806.05(c). In the present Restriction Requirement, the PTO provides no evidence of

Application No. 10/700,239  
Reply to Restriction Requirement of August 1, 2006

separate classification, status, or field of search, and hence provides no reasons for insisting on restriction.

In addition, the PTO attempts to support the restriction by stating that "the subcombination or (*sic*, of) each of the nucleocapsid proteins has a separate utility as structurally independent and distinct components of the influenza protein polymerase complex." The PTO further asserts that "The nucleocapsid protein species are related as subcombinations disclosed as usable together in a single combination." However, the claims under consideration refer to, *inter alia*, cells which lack at least one or all nucleocapsid proteins. Thus, the PTO's assertion that these proteins have utility in a single combination is simply of no consequence to the scope of the claims under examination.

Accordingly, the PTO has not met its burden for supporting a restriction, and Applicant respectfully requests withdrawal of the Restriction Requirement.

In the Restriction Requirement, the PTO requires identification of claims encompassing the elected invention. In this case, Applicant elects claims directed to methods utilizing cells lacking protein PA. Applicant suggests that all of the claims encompass methods which can utilize cells lacking protein PA.

#### CONCLUSION

As it is believed the application is in a condition for allowance, prompt and favorable consideration of this application or Notice of Allowance is respectfully requested. Applicant believes that there no fee due at this time. If this is determined to be inaccurate, any deficiency may be charged to Deposit Account No. 19-3140. The Examiner is invited to contact the undersigned attorney to discuss this application at the telephone number provided below.

Respectfully submitted,



Saul L. Jackson, Ph.D.  
Reg. No. 52,391  
Customer No. 26263  
314.259.5802